

DATE

Peter Bowen
Deputy Chief Administrative Officer
City of New Orleans
1340 Poydras Street, Suite 1014
New Orleans, Louisiana 70112

Re: **Louisiana Board of Ethics**
Docket No. 2021-485

Dear Mr. Bowen,

The Louisiana Board of Ethics, at its meeting on August 6, 2021, considered your request for an advisory opinion as to any issues presented by the Code of Governmental Ethics (“Code”) in connection with your ownership of stock in Sonder USA, Inc. while you are employed by the City of New Orleans.

FACTS PROVIDED

In July of 2020, you were hired by the City of New Orleans (“City”) as Deputy Chief Administrative Officer within the Office of Business & External Services (“OBES”). You report to Chief Administrative Officer Gilbert Montañó. OBES provides oversight and administrative support to several City departments, including the Department of Safety & Permits (“DSP”).

The Short-Term Rental Division is responsible for permitting and enforcement of the City’s Ordinance No. 28157 concerning application procedures, permit types and fees, operating regulations, enforcement parameters and penalties with respect to short term rentals. The Short-Term Rental Division is housed within DSP and is overseen by Administrator Celeste Sparks. Ms. Sparks reports directly to the Chief Zoning Official, who reports to DSP Director Tammie Jackson. Per Ordinance No. 28157, Ms. Jackson, as DSP Director, has the power to determine compliance with the ordinance and is the ultimate legal authority and decision-maker for short-term rental administration and enforcement. While you have been informed about different aspects of the short-term rental division, your role has been to support the improvement of the overall functionality of all DSP enforcement activities, the leadership development of the DSP, as well as the general workflow and process improvement as part of a broader realignment of DSP.

Sonder USA, Inc. (“Sonder”) is a privately held, international company which primarily leases property to be operated as lodging as either short-term rentals or hotel licenses. As

part of its business, Sonder routinely seeks permits through DPS and is subject to the operating regulations and possible enforcement action by the Short-Term Rental Division within DSP.

Prior to working for the City, you were employed by Sonder as General Manager in New Orleans. As part of your compensation package, you were given the opportunity to purchase stock in Sonder. As part of the Stock Option Agreement, you were required to exercise the option agreement within 90 days of the end of your employment. In February 2019, you ended your employment with Sonder. On April 29, 2019, you executed the Option Agreement. Your stock ownership presents an interest of less than 1% in Sonder. As part of the agreement, you are prohibited from transferring the stock while Sonder is a privately-held company.

Sonder is currently planning on merging with a publicly held company, Gores Metropoulos II, Inc. In addition to the transfer prohibition while Sonder is a privately held company, the Option Agreement prohibits any transfer of stock until there is a completed liquidity event, such as the merger, and through a subsequent "lock up" period. At that point, Sonder will have the ability to promulgate rules with further restrictions related to the disposition of stock. As a result, you currently have no means to dispose of your stock ownership.

You ask whether your ownership of stock in Sonder presents any issues as Deputy Chief Administrative Officer for OBES. You stated that you have not interacted with any transactions specifically involving Sonder as an employee of the City.

OWNERSHIP OF STOCK

La. R.S. 42:1111C(2)(d): No public servant ... shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service, unless such services are neither performed for nor compensated by any person who:

- (1) has a contractual, business, or financial relationship with the public servant's agency; or
- (2) conducts operations which are regulated by the public employee's agency;

La. R.S. 42:1102(2)(a) defines "agency" to mean a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. For purposes of the Code, "agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean: (vi) for public servants of political subdivisions, the agency in which the public servant serves.

The Board concluded, and instructed me to inform you, that generally, Section 1111C(2)(d) prohibits you from receiving any thing of economic value from Sonder in exchange for services rendered, or to be rendered, while you are employed by the City in OBES and while Sonder has a business relationship with, and is regulated by, the Short-Term Rental

Division within OBES. However, since your ownership of Sonder stock occurred prior to your employment with the City, and was for services rendered to Sonder prior to your employment with the City, your continued ownership of the stock presents no issues under Section 1111C(2)(d).

The Board cautioned that in the event you are able to dispose of your stocks at a future date, La. R.S. 42:1114 will require you to disclose any income received from the sale of the stock. Form 405 can be found at ethics.la.gov.

PROHIBITED PARTICIPATION

La. R.S. 42:1112A: No public servant ... shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

La. R.S. 42:1112B: No public servant ... shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.

(5) Any person who is a party to an existing contract with such public servant ... or who owes anything of economic value to such public servant ... and who by reason thereof is in a position to affect directly the economic interests of such public servant.

La. R.S. 42:1102(21) defines "substantial economic interest" to mean an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons.

La. R.S. 42:1112C: Every public employee, excluding an appointed member of any board or commission, shall disqualify himself from participating in a transaction involving the governmental entity when a violation of this Part would result.

The Board concluded, and instructed me to inform you, that Section 1112 prohibits you from participating in any transaction involving the City in which Sonder has a substantial economic interest, while you have a substantial economic interest in Sonder through your stock ownership.

DISQUALIFICATION PLAN

The City has submitted a disqualification plan that proposes that DSP Director Tammie Jackson will handle all transactions involving Sonder, per the requirements of the City's Charter. In the event any oversight or further action is necessary, Chief Administrative Officer Gilbert Montañño will handle those matters in which Sonder may have a substantial economic interest as defined by La. R.S. 42:1102(21).

The Board concluded, and instructed me to inform you, that the proposed disqualification plan meets the requirements of Chapter 14 of Title 52 of the Louisiana Administrative Code – Rules of the Board of Ethics to prevent a potential violation of Section 1112.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. Please note that the Board issues no opinion as to past conduct and that the Board's expressed opinion is limited to an examination of the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions in the gaming laws.

If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

David M. Bordelon
For the Board

DISCLAIMER: This is a draft opinion and it is NOT an opinion of the Louisiana Board of Ethics. No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics in which the matters are considered.